IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.559 OF 2006

The Greater Bombay Cooperative Bank Ltd .. Petitioner

versus

M/s Stecon Plastopack Pvt.Ltd.& ors. Respondents

Mr.Prashant Naik for Petitioner

Mr.Kishore Jain i/b Mr.Chotani for Respondent nos. 1 to 3.

Mr.R.M.Patne, Assistant Government Pleader for Respondent nos. 4 and 5.

CORAM : D.G.KARNIK, J

DATED : 1st March, 2006

P.C.

1. Rule. By consent, rule is made returnable forthwith. Mr.Kishore Jain waives service for the respondent nos.1 to 3. Mr.R.M.Patne Assistant Government Pleader waives service for respondent nos. 4 and 5.

2. By this petition, the petitioner challenges the order dated 14th October, 2005 passed by the Divisional Joint Registrar, Cooperative Societies, Mumbai in revision application No.142 of 2002.

3. The respondent nos.1 to 3 had filed the revision application No.142 of 2002 challenging

the order passed by the Assistant Registrar, Cooperative Societies issuing the recovery certificate under section 101 of the Maharashtra Cooperative Societies Act, 1960 (for short the MCS Act). The respondent nos.1 to 3 were required to deposit 50 % of amount due as the certificate as provided under section 154 (2A) of the MCS Act. According to the petitioner, the requisite deposit was not made. After hearing the parties by the order dated 8th November, 2002 the Divisional Joint Registrar rejected the revision application for non compliance of section 154 (2A) of the MCS Act. The respondent nos. 1 to 3 challenged the said order dated 8th November, 2002 by filing a Writ Petition bearing Stamp No.49386 of 2002 (numbered as rejected case No.572 of 2005). After hearing the appearing parties, this Court permitted the respondent nos. 1 to 3 to withdraw the Writ Petition with liberty to pursue appropriate remedy in accordance with law. Thereafter, the respondents filed an application before the Divisional Joint Registrar for reviewing his own order dated 8th November, 2002. Though specific word " Review" was not used in the application, a perusal of the application leaves no doubt that it was an application for reviewing and recalling the order dated 8th November, 2002. It was prayed that the order dated 8th November, 2002 be recalled and it be held that the

petitioner-bank had with it more than 50% of the amount of the recovery certificate and therefore the revision application be restored to file. The petitioner opposed the said application for review. By the order dated 24th October, 2005 the review application was allowed and the order dated 8th November, 2002 was recalled and the revision application No. 142 of 2002 was restored to file after condoning the delay. That order is impugned in this petition.

4. It is settled principle of law that power of review is not an inherent power of any court or tribunal. The power of review can be exercised only where it is specifically conferred by a statute. It is not disputed that the MCS Act does not confer any power of review on the Divisional Joint Registrar. The Divisional Joint Registrar was not entitled to recall or review his own order dated 8th November, 2002. If the order dated 8th November, 2002 was in any way erroneous, either for reasons stated in the review application or otherwise, it was open to the respondents 1 to 3 to challenge the order by appropriate means. In fact a Writ Petition was filed challenging the order. However on advise, right or wrong, the Writ Petition was withdrawn for pursuing appropriate remedy in accordance with law. The review was not an appropriate remedy and merely

because this Court permitted the respondents 1 to 3 to withdraw the review application with liberty to pursue appropriate remedy would not clothe any jurisdiction on the Divisional Joint Registrar to review or recall his own order.

5. For these reasons, it has to be held that the impugned order dated 24th October, 2005 is without jurisdiction and bad in law. Accordingly, the Writ Petition is allowed. Rule is made absolute in terms of prayer clauses (a) and (b).

6. At the request of the learned counsel for the respondents 1 to 3 it is directed that the petitioner shall not execute the recovery certificate for a period of six weeks from today subject to the condition that the respondents 1 to 3 shall file an affidavit in this Court within one week that they shall not sell, dispose of, alienate, or part with the possession of any of their properties.

(D.G.KARNIK, J)

rng.